



M #A

**PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378 (c))**

Docket Number (Optional)

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Fax: (571) 273-8300

**RECEIVED**

11/10/2010 DALLEN 00000002 6326446  
01 FC:1599 940.00 OP

NOV 15 2010

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

OFFICE OF PETITIONS

Patent No. 6326446 Application Number 09/735,525  
Issue Date Dec 4, 2001 Filing Date Dec 14, 2000

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above – identified patent

☐ Is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_  
original application number \_\_\_\_\_  
original filing date \_\_\_\_\_  
  
☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application \_\_\_\_\_  
filed on \_\_\_\_\_

NOV 16 2010

**CERTIFICATE OF MAILING (37 CFR 1.89(a))**

I hereby certify that this paper (\*along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class main in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Oct 11, 2010 James T. Carter  
Date Signature  
James T. Carter  
Typed or Printed Name of Person Signing Certificate

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450

## 1. SMALL ENTITY



Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS



Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ <u>1240<sup>00</sup></u>	7 ½ yr fee <b>PAID</b>	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 1240<sup>00</sup> **PAID**

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of \$ 1640<sup>00</sup> (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of a maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 940<sup>00</sup>

## 5. MANNER OF PAYMENT

Enclosed is a check for the sum of \$ 940<sup>00</sup>

Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_



Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY



The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. \_\_\_\_\_

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

## 7. OVERPAYMENT

As to any overpayment made please

OR

☐

Credit to Deposit Account No. \_\_\_\_\_

☒

Send refund check

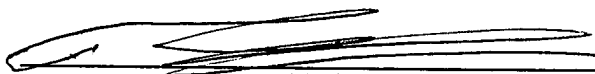
**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

## 9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

  
Signature(s) of Petitioner(s)

James T. Carter

Typed or printed name(s)

415-345-9271

Telephone Number

640 Turk St., Apt. 4, San Francisco, CA 94102

Address

NOVEMBER 3, 2010  
OCT 11, 2010  
Date

Registration Number, if applicable

Address

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

## ENCLOSURES

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Maintenance Fee Payment

☐

Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)

☐

## Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



JAMES T. CARTER, O.D.

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November 3, 2010

Alesia M. Brown  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

RECEIVED  
NOV 15 2010  
OFFICE OF PETITIONS

Ref: Carter Pat. No. 6,326,446, Petition PTOSB66

Dear Ms. Brown,

I have received your Sept 27, 2010 Decision on Petition under 37 CFR 1.378(b). relating to the Unavoidable Delay of Maintenance Fee payment that I mailed Feb 15, 2010.

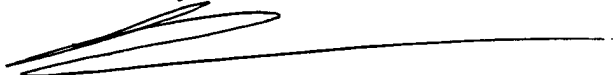
I must now recognize my oversight and the ministerial error of untimely payment of my 7.5 year maintenance fee.

Therefore, I have chosen the Alternative Remedy of your decision letter and thereby enclosing a Petition of Unintentional Delay, PTOSB66, along with a check of \$940.00 for the additional surcharge required from the \$700.00 paid earlier, thus in full satisfaction of the complete surcharge payment of \$1,640.00.

You are already in receipt of my 7.5 yr small entity maintenance fee payments of \$1040.00 and \$160.00 in satisfaction for the total currently required of \$1,240.00.

Please accept the enclosed as well as my good faith in this matter before us.

Yours truly,



James T. Carter, O.D.

Encl: Form PTOSB66  
Surcharge balance check (\$940.00)